

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	4:05cr3019
vs.)	
)	
KHALAT JAMALTHAEAL ALAMA,)	
)	
Defendant.)	

PRELIMINARY JURY INSTRUCTIONS

PRELIMINARY INSTRUCTIONS IN A CRIMINAL TRIAL

NATURE OF CASE; NATURE OF INDICTMENT
BURDEN OF PROOF; PRESUMPTION OF INNOCENCE;
DUTY OF JURY; CAUTIONARY

Ladies and gentlemen: I shall take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I shall give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a criminal case, brought against the defendant[s] by the United States Government. I will now ask the government attorney to summarize the charges for you. You should understand that the government's charges are simply accusations. They are not evidence of anything. The defendant[s] [has] [have] pleaded not guilty, and [is] [are] presumed to be innocent unless and until proved guilty beyond a reasonable doubt.

It will be your duty to decide from the evidence whether [the] [each] defendant is guilty or not guilty of the crime[s] charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will

then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

Finally, please remember that only [this defendant] [these defendants], not anyone else, [is] [are] on trial here, and that [this defendant] [these defendants] [is] [are] on trial only for the crime[s] charged, not for anything else.

ELEMENTS OF THE OFFENSE (PRELIMINARY)

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime[s] charged, which the government must prove beyond a reasonable doubt to make its case:

(READ EXHIBIT "A"--ATTACHED)

You should understand, however, that what I have just given you is only a preliminary outline. At the end of the trial I shall give you a final instruction on these matters. If there is any difference between what I just told you, and what I tell you

in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern you.

EVIDENCE; LIMITATIONS

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated--that is, formally agreed to by the parties, and any facts that have been judicially noticed--that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by

you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

NO TRANSCRIPT AVAILABLE; NOTE TAKING AND QUESTIONS

At the end of the trial you must make your decision based on

what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness. When you leave at night, your notes will be secured and not read by anyone.

I do not permit jurors to ask a witness questions orally or in writing.

BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

CONDUCT OF THE JURY

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case -- you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side -- even if it is simply to pass the time of day -- an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation

about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, the government attorney will make an opening statement. Next the defendant's attorney may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence and counsel for defendant may cross-examine. Following the government's case, the defendant may, but does not have to, present evidence, testify or call other witnesses. If the defendant calls witnesses, the government counsel may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

RECESSES

During any recess, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone tries to

talk to you about the case, please let me know about it immediately. Do not read, watch or listen to any news reports of the trial. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every recess, but keep them in mind throughout the trial.

EXHIBIT A

Count I

The government alleges a violation of **Title 21, United States Code, Sections 841(a)(1), 841(b)(1), and 846**, which make it a crime to conspire to distribute and possess with intent to distribute a controlled substance. The elements of this crime are as follows:

One: Between on or about June 1, 2003, and on or about January 11, 2005, in the District of Nebraska and elsewhere, the defendant, **KHALAT JAMALTHAEAL ALAMA, a/k/a Ali**, and one or more persons reached an agreement or came to an understanding to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance;

Two: The defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three: At the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and

Four: If you find that elements one, two and three have been proven beyond a reasonable doubt, you will also be required on the verdict form to find unanimously beyond a reasonable doubt what quantity of a mixture or substance containing methamphetamine was involved in the conspiracy.

In making this finding, you will be instructed to only count quantities while the defendant was a member of the conspiracy, including: (a) all quantities with which the defendant was directly involved that were within the scope of the conspiracy; and (b) all quantities reasonably foreseeable to the defendant that were within the scope of the conspiracy.

Quantity

To assist you in determining quantity in Count I, you are advised that the following weight measurements are equivalent:

1 oz (ounce) = 28.35 gm (grams)

1 lb (pound) = 453.6 gm (grams)

1 lb (pound) = 0.4536 kg (kilograms)

1 lb (pound) = 16 oz (ounces)

1 kg (kilogram) = 1,000 gm (grams)

1 gm (gram) = 1,000 mg (milligrams)

1 grain = 64.8 mg (milligrams)